

# SENATE BILL No. 371

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9.

**Synopsis:** Fair pay in employment. Provides that: (1) it is an unlawful employment practice to pay wages that are discriminating based on sex, race, or national origin for the same or equivalent jobs; and (2) the civil rights commission has jurisdiction for investigation and resolution of complaints of these employment actions.

**Effective:** July 1, 2014.

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## Breaux

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January 14, 2014, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 371

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 22-9-1-2 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) It is the public policy of the  
3       state to provide all of its citizens equal opportunity for education,  
4       employment, access to public conveniences and accommodations, and  
5       acquisition through purchase or rental of real property, including but  
6       not limited to housing, and to eliminate segregation or separation based  
7       solely on race, religion, color, sex, disability, national origin, or  
8       ancestry, since such segregation is an impediment to equal opportunity.  
9       Equal education and employment opportunities and equal access to and  
10      use of public accommodations and equal opportunity for acquisition of  
11      real property are hereby declared to be civil rights.  
12      (b) The practice of denying these rights to properly qualified  
13      persons by reason of the race, religion, color, sex, disability, national  
14      origin, or ancestry of such person is contrary to the principles of  
15      freedom and equality of opportunity and is a burden to the objectives  
16      of the public policy of this state and shall be considered as

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discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, disability, national origin, or ancestry through reasonable methods is the purpose of this chapter.

(c) It is also the public policy of this state to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.

(d) It is hereby declared to be contrary to the public policy of the state and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry.

(e) The general assembly recognizes that on February 16, 1972, there are institutions of learning in Indiana presently and traditionally following the practice of limiting admission of students to males or to females. It is further recognized that it would be unreasonable to impose upon these institutions the expense of remodeling facilities to accommodate students of both sexes, and that educational facilities of similar quality and type are available in coeducational institutions for those students desiring such facilities. It is further recognized that this chapter is susceptible of interpretation to prevent these institutions from continuing their traditional policies, a result not intended by the general assembly. Therefore, the amendment effected by Acts 1972, P.L.176, is desirable to permit the continuation of the policies described.

**(f) After June 30, 2015, it is against the public policy of the state for an employer to discriminate against employees on the basis of sex, race, or national origin by:**

**(1) paying wages to an employee at a rate less than the rate paid to an employee of the opposite sex or a different race or national origin for work in an equivalent job; or**

**(2) paying wages to an employee in an employment position that is dominated by employees of a particular sex, race, or national origin at a rate less than the rate at which the employer pays to employees in another employment position that is dominated by employees of the opposite sex or a different race or national origin, for work on equivalent jobs.**

**(g)** This chapter shall be construed broadly to effectuate its purpose.

SECTION 2. IC 22-9-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2014]:

**Chapter 10. Fair Pay in Employment**

**Sec. 1. This chapter applies after June 30, 2015.**

**Sec. 2. As used in this chapter, "commission" means the civil rights commission created by IC 22-9-1-4.**

**Sec. 3. As used in this chapter, "complaint" has the meaning set forth in IC 22-9-1-3(o).**

**Sec. 4. As used in this chapter, "employ" means to suffer or permit to work.**

**Sec. 5. As used in this chapter, "employee" has the meaning set forth in IC 22-9-1-3(i).**

**Sec. 6. As used in this chapter, "employer" has the meaning set forth in IC 22-9-1-3(h).**

**Sec. 7. As used in this chapter, "equivalent jobs" means jobs or occupations that are equal within the meaning of the Equal Pay Act of 1963, 29 U.S.C. 206(D), or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skills, effort, responsibility, and working conditions.**

**Sec. 8. As used in this chapter, "labor organization" has the meaning set forth in IC 22-9-1-3(j).**

**Sec. 9. As used in this chapter, "market rates" means the rates that employers within a prescribed geographic area actually pay, or are reported to pay, for specific jobs, as determined by formal or informal surveys, wage studies, or other means.**

**Sec. 10. As used in this chapter, "person" means an individual, a partnership, an association, a corporation, a limited liability company, a legal representative, a trustee, a trustee in bankruptcy, a receiver, the state, and a municipal corporation (as defined in IC 36-1-2-10).**

**Sec. 11. As used in this chapter, "wages" or "wage rates" includes all compensation of any kind that an employer provides to an employee in payment for work done or services rendered, including:**

- (1) base pay;**
- (2) bonuses;**
- (3) commissions;**
- (4) awards;**
- (5) tips; or**
- (6) any form of nonmonetary compensation if provided instead of or in addition to monetary compensation and that has economic value to an employee.**

**Sec. 12. It is an unlawful employment practice for an employer**



1 to discriminate between employees on the basis of sex, race, or  
2 national origin by:

3 (1) paying wages to an employee at a rate less than the rate  
4 paid to an employee of the opposite sex or a different race or  
5 national origin for work on an equivalent job; or

6 (2) paying wages to an employee in an employment position  
7 that is dominated by employees of a particular sex, race, or  
8 national origin at a rate less than the rate at which the  
9 employer pays to employees in another employment position  
10 that is dominated by employees of the opposite sex or of a  
11 different race or national origin for work on equivalent jobs.

12 Sec. 13. Notwithstanding the provisions of section 12 of this  
13 chapter, it is not an unlawful employment practice for an employer  
14 to pay different wage rates to employees when the payments are  
15 made under:

16 (1) a bona fide seniority or merit system;

17 (2) a bona fide system:

18 (A) that measures earnings by quantity or quality of  
19 production; or

20 (B) based on geographic differentials; or

21 (3) a bona fide factor other than sex, race, or national origin,  
22 provided that the factor:

23 (A) does not result in discrimination based on sex, race, or  
24 national origin; and

25 (B) is not the result of varying market rates attached to  
26 historically undervalued traditionally female or minority  
27 job classifications.

28 Sec. 14. It is an unlawful employment practice for an employer:

29 (1) to reduce the wages of any employee in order to comply  
30 with the provisions of this chapter when the employer is  
31 paying wages in violation of this chapter;

32 (2) to take adverse action or otherwise discriminate against an  
33 individual because the individual has:

34 (A) opposed an act or practice deemed unlawful by this  
35 chapter;

36 (B) sought to enforce rights protected under this chapter;  
37 or

38 (C) testified, assisted, or participated in any manner in an  
39 investigation, hearing, or other proceeding to enforce this  
40 chapter; or

41 (3) to discharge, or in any other manner discriminate against,  
42 coerce, intimidate, threaten, or interfere with an employee or



another person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages or the wages of another employee, or because the employee exercised, enjoyed, aided, or encouraged another person to exercise or enjoy a right granted or protected by this chapter.

**Sec. 15.** A labor organization or agents of the labor organization that represents employees of an employer with employees subject to a provision of this chapter may not cause or attempt to cause the employer to discriminate against an employee in violation of section 12 or 13 of this chapter.

**Sec. 16.** An agreement by an employee to work for less than the compensation to which the employee is entitled to work under this chapter is not a bar to an action to which the employee would otherwise be entitled in order to enforce the provisions of this chapter.

**Sec. 17.** Nothing in this chapter shall be construed to impede, infringe, or diminish the rights and benefits which accrue to an employee through a bona fide collective bargaining agreement or otherwise diminish the integrity of a existing collective bargaining relationship.

**Sec. 18.** The commission shall adopt rules under IC 4-22-2 specifying the criteria for determining whether a job is dominated by employees of a particular sex, race, or national origin. The criteria used shall include factors such as:

(1) whether the job has ever been formally classified or traditionally considered to be a male, female, Caucasian, or minority job;

(2) whether there is a history of discrimination against women or people of color with respect to wages, assignment to, or access to jobs or other terms and conditions of employment; and

(3) the demographic composition of the workforce in equivalent jobs, which includes numbers or percentages of males, females, Caucasians, and people of color.

The rules may not include a list of jobs.

**Sec. 19.** In addition to the rules adopted under section 18 of this chapter, the commission shall adopt rules under IC 4-22-2 specifying the methodology for determining equivalent skill, effort, responsibility, and working conditions. A methodology prescribed by the commission shall ensure that comparison systems do not ignore or undervalue the worth of jobs where women and



1 minorities are disproportionately represented. The equivalence of  
2 jobs dominated by employees of a particular sex, race, or national  
3 origin relative to jobs dominated by employees of the opposite sex  
4 or of a different race or national origin will be established through  
5 the application of a single job comparison system that does not  
6 systematically ignore or undervalue the job content of traditionally  
7 female and minority jobs.

8 **Sec. 20.** In addition to the rules required to be adopted under  
9 sections 18 and 19 of this chapter, the commission may adopt and  
10 enforce rules under IC 4-22-2 that are necessary to carry out this  
11 chapter.

12 **Sec. 21. (a)** The commission shall receive, investigate, and  
13 attempt to resolve complaints of violations of this chapter in the  
14 manner provided by IC 22-9-1-6.

15 (b) IC 22-9-1-16, IC 22-9-1-17, and IC 22-9-1-18 apply to  
16 complaints filed in accordance with this chapter.

